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14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

16 ALI SALEEM BEY and JOHN MUHAMMAD
17 BEY,

18 Plaintiffs,

19 v.

20 CITY OF OAKLAND and DOES 1-100
21 Defendants.

22 Case No. 14-cv-01626-JSC

23 **DECLARATION OF JASON M. ALLEN
24 IN SUPPORT OF SEALING
25 DEFENDANTS' CONFIDENTIAL
26 DOCUMENTS [Dkt 142]**

27 Honorable Jacqueline Scott Corley

28 Action Filed: April 19, 2014
Trial Date: November 5, 2018

1 I, Jason M. Allen, declare as follows:

2 1. I am an attorney licensed to practice before all courts of the State of California and
 3 before the United States District Court for the Northern District of California. I am a Deputy City
 4 Attorney with the Oakland City Attorney's Office, counsel of record for Defendant City of
 5 Oakland (the "City") in this action. I have personal knowledge of the matters stated herein, and, if
 6 called as a witness, I could and would competently testify thereto.

7 2. I provide this declaration pursuant to the Court's order granting and denying in part
 8 Plaintiffs' motions to file under seal certain documents and information designated by the City as
 9 "Confidential" under the Protective Order in this case. [Dkt. 142.] This declaration addresses
 10 documents filed with Plaintiffs' motion for an independent investigator—specifically, the declarations
 11 of Plaintiff John Muhammad Bey and Ali Saleem Bey and Exhibits 12, 13, 16, 17, and 28.

12 3. Notably, Plaintiffs' motion was *not* a dispositive motion, which, as the Court noted,
 13 reduces the public interest in accessing court records. [Dkt. 142, at 1 (citing *Kamakana v. City & Cnty.*
 14 *of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).] Further, in ruling on Plaintiffs' motion, the Court
 15 expressly declined to consider Plaintiff John Bey's Declaration and, *inter alia*, Exhibits 12, 13, 16,
 16 and 17 thereto, and the Court's analysis does not reference or appear to rely on Plaintiff Ali Saleem
 17 Bey's declaration or Exhibit 28 thereto. [Dkt. 141, at 3, 4-6]; see *Prior v. City of Clearlake*, 11-cv-
 18 0954, 2012 WL 3276992, at *2 (N.D. Cal. Aug. 9, 2012) (granting a request to seal documents that
 19 included identifying information and were not relevant to resolving a motion for summary judgment).

20 4. **Exhibits 12 and 28** include documents within the Internal Affairs Division ("IAD")
 21 investigatory file related to Plaintiffs' 2013 IAD complaint number 13-1062. On or about March 12,
 22 2018, I spoke with Matt McCulley, a legal assistant in the office of Plaintiffs' counsel. Mr. McCulley
 23 explained that Exhibits 12 and 28 include overlapping documents: In the version of Exhibit 12
 24 originally filed with the Court [Dkt. 108-12], a technical error caused substantial portions of pages 69-
 25 138 (all pages following Bates-labeled page 4475) to be cut off from view (including the Bates-labels).
 26 Exhibit 28 is composed of what was initially intended to be the last 64 pages of Exhibit 12.

27 5. **Exhibit 12** includes discussion of the investigation of, and suggested findings related
 28 to, the performance of duties by former OPD officers, as well as some discussion related to the status

1 of criminal investigations into a murder and an attempted murder. [Ex. 12, at 11-13 (Bates-labeled
 2 4418-20, under the section titled “Credibility Assessment – Subject Officers”).] Exhibit 12 also
 3 includes documents related to an earlier IAD investigation of current and former OPD officers, filed
 4 by a complainant other than Plaintiffs. [*Id.* at 57-68 (Bates-labeled 4464-4475); *see also id.* at 69
 5 (partially cut off).] The exhibit also identifies officers to be investigated in relation to Plaintiffs’ 2013
 6 IAD complaint. [*See id.* at 128.] Those pages identify the subject officers, the allegations against them,
 7 recommended findings, investigatory steps and processes, and the identities and summaries of
 8 statements provided by witnesses. As noted by the Court, officers’ “need for privacy weighs strongly
 9 in favor of sealing,” in particular where this document was not considered in deciding Plaintiffs’
 10 motion. [Dkt. 142, at 2 (citing *Seals v. Mitchell*, 04-cv-3764, 2011 WL 1233650, at *3 (N.D. Cal. Mar.
 11 30, 2011).]

12 6. Exhibit 12 also includes documents from files related to open criminal investigations of
 13 an attempted murder and a murder. [Ex. 12, at 94-126.] As the Court noted, documents related to open
 14 criminal investigations should be sealed. [Dkt. 142, at 2 (citing *United States v. Doe*, 8780 F.3d 991,
 15 1000 (9th Cir. 2007).]

16 7. Based on the inclusion in Exhibit 12 of information related to investigations of current
 17 and former OPD officers and open criminal investigations, the City requests to redact pages 11-13, 57-
 18 68, 94-126, 128.

19 8. **Exhibit 28** includes documents related to investigations into current and former OPD
 20 officers.¹ [Ex. 28, at 2 (Bates-labeled 4476), 61 (Bates-labeled 4535).] It also includes information
 21 related to open criminal investigations. [*Id.* at 27-59 (Bates-labeled 4501-33).] Accordingly, the City
 22 requests to redact pages 2, 27-59, and 61 of Exhibit 28.

23 9. **Exhibit 13** includes documents from a Citizens’ Police Review Board (“CPRB”) file
 24 for an investigation into allegations of misconduct against current and former members of the Oakland
 25 Police Department. The documents included in Exhibit 13 are in that CPRB file, but they come from
 26 an investigation by the California Department of Justice of allegations of misconduct by current and
 27 former OPD officers. Those documents were attachments to a transcript of an interview of an OPD

28 ¹ Again, Exhibit 28 includes corrected versions of the final 64 pages of Exhibit 12.

officer conducted by the California Department of Justice, as part of its investigation.²

10. The Court correctly notes that the first pages of Exhibit 13 include a call out roster with Officers' personal contact information redacted. [Ex. 13, at 2-5 (Bates 3278-81 (Attachment 1-15)).] Subsequent pages of Exhibit 13, however, include largely unredacted portions of a criminal homicide investigation. [*Id.* at 6-14 (Bates-labeled 3282-90 (Attachment 1-16)).] Although some information is redacted, those pages include the identities of and summaries of statements by persons interviewed by officers investigating the murder, the identities of potential suspects, the identities of the investigating officers, and various investigative steps and methods employed during that homicide investigation. It also lists the identity and, potentially, the address of a family member of the victim. [*Id.* at 7-13 (Bates 3283-89).] Additionally, later pages within Exhibit 13 include a timeline of events related to an investigation into alleged misconduct by a former OPD officer. [*Id.* at 15- 17 (Bates-labeled 3291-93 (Attachment 1-17)).]

11. Exhibit 13 thus includes personnel information regarding current and former OPD officers, information about methods and steps taken in a homicide investigation, and information identifying potential witnesses, informants, and family members of the victim in that homicide investigation. Accordingly, the City requests that, within Exhibit 13, pages 7-13 (Bates-labeled 3283-89) and 16-17 (Bates-labeled 3292-93) be redacted and remain under seal.

12. **Exhibits 16 and 17** are documents within a CPRB investigation file. They are portions of interviews of former OPD officers, conducted by the California Department of Justice as part of its investigation into allegations of misconduct by current and former OPD officers.³ Accordingly, the City requests that Exhibits 16 and 17 remain sealed.

13. Because, the exhibits discussed above include confidential information that should remain sealed, the City requests to redact references in Plaintiff John Muhammad Bey's declaration to information from Exhibits 12, 13, 16, and 17 that should remain sealed (in addition to redacting

² The documents in Exhibit 13 were part of the same California Department of Justice investigation as referenced in Exhibit 1, which the Court determined should remain sealed. [Dkt. 142, at 2.]

³ Exhibits 16 and 17 were created as part of the same California Department of Justice investigation as referenced in Exhibit 1, which the Court determined should remain sealed. [Dkt. 142, at 2.]

references to Exhibit 1, as previously ordered by the Court). [Dkt. 42, at 4.] Specifically, the City also seeks to retain the redactions in Plaintiff John Muhammad Bey’s declaration to paragraphs 28, 30, 36, 39, 40, 42, 48 (Exhibit 12); 33 (Exhibit 13); 51, 70 (Exhibit 16); 61, (Exhibit 17).

4 14. Similarly, because they include confidential information that should remain sealed, the
5 City requests to redact references in Plaintiff Ali Saleem Bey’s declaration to information from
6 Exhibits 12, 13, 16, 17, and 28 that should remain sealed (in addition to redacting references to
7 Exhibits 1, 11, 27, 30, and 33, as previously ordered by the Court). [Dkt. 42, at 4.] Specifically the
8 City also seeks to retain the redactions in Plaintiff Ali Saleem Bey’s declaration to paragraphs 23
9 (Exhibit 17), 46 (Exhibit 16); 52, 54, 55, and 56 (Exhibit 12); 57 (Exhibit 28). The City also requests
10 to retain the redactions to paragraphs 73, 74, and 84, which discuss IAD and CPRB investigations of
11 current and former OPD officers and related findings and conclusions.

12 I declare under penalty of perjury under the laws of the United States and the State of
13 California that the foregoing is true and correct. Executed this 13th day of April, 2018, at Oakland,
14 California.

/s/ Jason M. Allen

Jason M. Allen